

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1589

IN THE MATTER OF:

Served August 6, 1976

Application of THE BALTIMORE AND )  
ANNAPOLIS RAILROAD COMPANY for Certif-) )  
icate of Public Convenience and )  
Necessity to Perform Charter )  
Operations )

Application No. 947

Docket No. 334

By motion filed August 2, 1976, The Baltimore and Annapolis Railroad Company (B&A) seeks to have the Commission amend Order No. 1582, served July 30, 1976, by deleting the fifth ordering paragraph. That paragraph directs B&A to cease and desist from rendering any passenger transportation for hire between points solely within the Metropolitan District, until further order of the Commission.

In support of its motion, B&A relies upon the decision of the United States Court of Appeals for the District of Columbia in Montgomery Charter Serv. v. Washington Met. A. Tr. Com'n., 112 U.S. App. D.C. 321, 302 F.2d 906 (1962). B&A merely has set forth quoted portions of that decision and has not indicated the applicability of that decision to the Commission's Order No. 1582. However, the Commission shall consider the motion as requesting reconsideration of Order No. 1582 and claiming as ground therefor the Commission's failure to comply with the case law set forth by the Court in the referenced case.

The Court's basis for setting aside the Commission's Order No. 107 and remanding the Montgomery Charter Service proceeding to the Commission is clearly and succinctly set forth.

"As we have indicated, such an order cannot be issued by the Commission unless it first finds from the record before it that the person to whom the order is directed has engaged in the conduct he is being commanded to discontinue. The record contains no evidence upon which that finding could be based, and indeed no such finding was actually made." Supra at 302 F.2d page 908.

With respect to the Commission's Order No. 1582 directing B&A to cease and desist from operating between points solely within the Metropolitan District, the record is replete with evidence of charter operations within the Metropolitan District. The Vice President of Sales for B&A, in a letter dated June 15, 1976, addressed to the Executive Director of the Commission, stated the following:

"The Baltimore and Annapolis Railroad Company has been performing Charter services involving Washington, D. C. since August 1, 1959 under I.C.C. Docket No. MC-102299, Sub. 7. In conjunction therewith, arrangements are made with charter groups (no individuals) for sightseeing and transfer service in the D. C. area. We also offer separate charter services from the District of Columbia area to all 50 states."

\* \* \* \* \*

"We are willing and will file whatever papers are required, but we don't feel that we should stop an operation that has been in existence and operating fully for almost seventeen years."

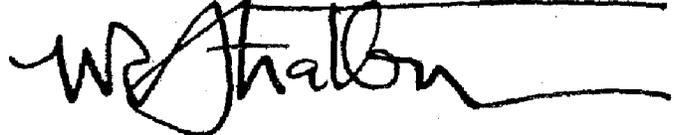
The Executive Director responded by letter dated June 18, 1976, and informed B&A that "No operations subject to WMATC jurisdiction may lawfully be conducted without the appropriate WMATC authority."

B&A then filed Application No. 947 and the Commission scheduled it for public hearing by Order No. 1578, served July 9, 1976. B&A subsequently filed a motion for continuance of the public hearing date, which the Commission granted by Order No. 1582. In its motion for continuance, B&A stated that it was lawfully operating the services for which authority had been requested. The Commission rejected this conclusion on the basis that charter operations, over irregular routes, from points within the Metropolitan District to points within the Metropolitan District would be subject to this Commission's jurisdiction. Upon consideration of the letter from B&A and its statement of operations within the Metropolitan District, the Commission directed B&A to cease and desist from rendering any operations subject to this Commission's jurisdiction until properly authorized to do so.

The Commission's directive in ordering paragraph five of Order No. 1582 was consistent with the case law set forth by the Court. The record contained evidence that B&A had been engaged in the conduct it was being commanded to discontinue. The Commission implicitly found that such conduct had been conducted and would be continued unless B&A were directed to cease and desist. The Commission's Order No. 1582 was proper and B&A's motion to amend shall be denied.

THEREFORE, IT IS ORDERED that the motion to amend Order No. 1582, served July 30, 1976, filed by The Baltimore and Annapolis Railroad Company be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



WILLIAM R. STRATTON  
Vice-Chairman